

BEFORE THE

Federal Communications Commission

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WASHINGTON, D.C.

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In re Applications of

SCRIPPS HOWARD
BROADCASTING COMPANYFor Renewal of License of
Station WMAR-TV,
Baltimore, Maryland

and

FOUR JACKS BROADCASTING, INC.

For Construction Permit for a
New Television Facility on
Channel 2 at Baltimore,
MarylandMM Docket No. 93-94

File No. BRCT-910603KX

File No. BPCT-910903KE

To: The Honorable Richard L. Sippel
Administrative Law Judge**OPPOSITION TO "MOTION FOR CORRECTION
OF MEMORANDUM OPINION AND ORDER"**

Four Jacks Broadcasting, Inc. ("Four Jacks"), by its attorneys and pursuant to Section 1.294 of the Commission's Rules, hereby opposes the "Motion for Correction of Memorandum Opinion and Order" ("Motion") filed by Scripps Howard Broadcasting Company ("Scripps Howard") on June 2, 1993. As set forth below, the Motion is impermissible, superfluous, and wrong, and it should be denied summarily.

1. Scripps Howard requests the Presiding Judge to "correct" his Memorandum Opinion and Order, FCC 93M-303 (released May 26, 1993) ("MO&O"), which denied a request by Four Jacks for certification of an application for review to the full

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Commission. Such an application for review would have challenged the failure of the Hearing Designation Order in this proceeding to include basic qualifying issues against Scripps Howard based on its history of anticompetitive conduct regarding its Sacramento, California cable subsidiary -- in particular, a jury finding that the Scripps Howard subsidiary had participated in an illegal franchising process through improper payments to local officials in exchange for a monopoly franchise. See Pacific West Cable Co. v. City of Sacramento, 672 F. Supp. 1322 (E.D. Cal. 1987) ("PacWest").

2. In the MO&O, the Judge stated by way of background, citing PacWest, that "[t]he jury found that the process whereby the municipality selected SCT involved the use of a scheme to trade a monopoly franchise in exchange for illegal payoffs, in-kind services, and increased campaign contributions." MO&O, para. 3 (emphasis added). Scripps Howard takes issue with, and requests the Presiding Judge to strike, the language "illegal payoffs" from the quoted passage. Scripps Howard's request, however, is both procedurally improper and factually unbiased.

3. First, Scripps Howard's Motion is completely unauthorized. There is no provision of the Commission's Rules allowing for "motions to correct" orders of the Presiding Judge. In essence, Scripps Howard's Motion is an appeal of the Judge's MO&O. However, appeals from interlocutory rulings of the Presiding Judge are permissible only upon the Judge's grant of a

request for permission to file the appeal. See 47 C.F.R. § 1.301(b). Scripps Howard has made no such request.

4. Moreover, absolutely no purpose would be served by consideration of Scripps Howard's Motion. The MO&O's reference to "illegal payoffs" occurred only in the Judge's background statement of facts; it played no part in the ruling. In fact, the MO&O was a ruling favorable to Scripps Howard. Scripps Howard's motion to "correct" a ruling in its favor is perverse indeed.

5. In attempting to justify its Motion, Scripps Howard cites Four Jacks' pending Petition to Enlarge Issues against Scripps Howard, admitting that "the scope of any perceived adjudicated 'misconduct' might conceivably . . . be deemed to have some impact in this proceeding." Motion at 3. Further, Scripps Howard states that "any mistaken statement of fact in the record might be used to cause unnecessary confusion over these facts in some future Four Jacks' pleading." Yet Scripps Howard had ample opportunity to challenge any alleged "erroneous factual statement" in its opposition to Four Jacks' petition to enlarge, and would have the same opportunity with respect to "some future Four Jacks' pleading." That Scripps Howard did not challenge the

basis on which to "correct" the MO&O. The Judge's entirely proper statement that the PacWest jury found the Scripps Howard cable system guilty of illegal payoffs stems from PacWest Special Verdict No. 12(d), in which the jury found that

"natural monopoly" [was] a sham used by defendants [the local franchising authorities] to promote the making of cash payments and provision of "in kind" services by the company ultimately selected to provide cable television service to the Sacramento market [Scripps Howard's subsidiary].

672 F. Supp. at 1350 (emphasis added).

7. Scripps Howard claims -- more specifically, guesses -- that "[t]he finding with respect to 'cash payments' instead refers apparently to the requirement that the entity selected as the franchisee would pay a franchise fee to the defendants," and that "[t]he reference to the 'provision of 'in-kind' services' likewise appears to refer to franchise-required public, educational and government ('PEG') program services." Motion at 2 (emphasis added). Scripps Howard's use of the words "apparently" and "appears" is extremely telling -- it shows that Scripps Howard is blindly speculating as to its rosy view of what these references meant. There is no basis, in the PacWest decision or anywhere else, for Scripps Howard's contentions.

8. Indeed, a review of the PacWest decision destroys the benign meaning of the jury verdict that Scripps Howard, through naked surmise, attempts to impose. In the first place, had the jury's references to "cash payments" and "in-kind services" meant simply franchise fees and public access channels, it is difficult to see why a jury verdict would be needed at all. The plain

language of Special Verdict 12(d) makes clear the jury's finding that the franchising process was a sham used to promote the making of cash payments and services to franchising officials by

CERTIFICATE OF SERVICE

I, Valerie A. Mack, a secretary in the law firm of Fisher, Wayland, Cooper and Leader, do hereby certify that true copies of the foregoing "OPPOSITION TO 'MOTION FOR CORRECTION OF MEMORANDUM OPINION AND ORDER'" were sent this 10th day of June, 1993, by first class United States mail, postage prepaid, to the following: